

# ::आयुक्त (अपील्स) का कार्यानय,वस्तु एवं सेवा करऔर केल्द्रीय उत्पाद शुल्क:: O/O THE COMMISSIONER (APPEALS), GST &CENTRAL EXCISE

दिवतीय तल,जी एस टी भवन / 2nd Floor, GST Bhavan रेस कोर्स रिंग रोड / Race Course Ring Road



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#### रजिस्टर्ड डाक ए.डी.द्वारा:-

अपील / फाइलसंख्या/ Appeal /File No. V2/168/BVR/2018-19

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मूल आदेश सं / O.I.O. No. AC/JND/10/2018 दिनांक/

Date: 20/6/2018

अपीलआदेशसंख्या(Order-In-Appeal No.):

### BHV-EXCUS-000-APP-240-2019

आदेश का दिनांक/ Date of Order:

29.10.2019

जारी करने की तारीख /

Date of issue:

05.11.2019

श्री गोपी नाथ,आयुक्त (अपील्स), राजकोट द्वारा पारित / Passed by Shri Gopi Nath, Commissioner (Appeals), Rajkot

अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर, राजकोट / जामनगर / गांधीधाम द्वारा उपरतिखित जारी मूल आदेश से सृजितः /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot/Jamnagar/Gandhidham:

अपीलकर्ता&प्रतिवादी का नाम एवं पता /Name&Address of theAppellants&Respondent :-

M/s.Saurashtra Cement Limited, Near Railway Station,, P.O.Ranavav-360560, Porbandar(Gujarat)

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/ Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।/ (A)

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/ (i)

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावी अहमदाबाद- ३८००१६को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para-1(a) above अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपीलीयनियावाती, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो कमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक झफ्ट द्वारा किया जाना चाहिए। संबंधित झफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/ (iii)

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of dutydemand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

अपीलीय न्यायाधिकरण के समक्ष अपील, वित अधिनियम,1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र 5.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग, ज्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/-रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा किया है। स्थिगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs.500/-

(i) वित्त अधिनियम,1994 की धारा 86 की उप-धार(ओ (१) ६७ (२०) के अलबैट दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा संख्या एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुक्क द्वारा पारित आदेश की प्रतियाँ संलब्ध करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुक्क/ सेवाकर, को अपीलीय न्यायाधिकरण की आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में . संलग्न करनी होगी । /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissionerauthorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/Service Tax to file the appeal before the Appellate Tribinal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीकीय प्राधिकरण (संस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वितीय अधिनियल, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेटा कर कांच के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धार के अंतर्गत रागा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो। केन्द्रीय उत्पाद शुल्क एवं पेदाकर के अंतर्गत "मांग नि.ए गए शुल्क" मे निम्न शामिल है

धारा 11 डी के अंतर्गत रकरा (i)

(ii) सेनवेट जमा की ली गई गलत राशि

सेनवेट जमा नियमावली के नियभ ६ के अंतर्गत देय रकन (iii)

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियमे 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष

- बशते यह कि इस धारा के प्रावधान विसीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे!/

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvot Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

भारत सरकार कोपुनरीक्षण आवेदन : Revision application to Government of India: इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर राचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। (C) A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse (i)

भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है! /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India. (ii)

यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty. (iii)

मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गईं है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998. (iv)

उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुक्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट हैं, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुक्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुक्क की अदायगी के साक्ष्य के तौर पर TR-(v) 6 की प्रति संतर्ग की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals)
Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be
accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan
evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया। जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो (vi) तो रूपये 1000 -/ का भुगतान किया जाए। The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थित अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता हैं। / In case, if the order covers variousnumbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each. (D)

यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended. (E)

सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982. **(F)** 

उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट (G) www.cbec.gov.in को देख सकते हैं । / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

## :: ORDER-IN-APPEAL ::

Berlin Starten and State

M/s Saurashtra Cement Ltd, Ranavav (hereinafter referred to as "Appellant") filed Appeal No. V2/168/BVR/2018-19 against Order-in-Original No. AC/JND/10/2018(De-novo) dated 20.6.2018 (hereinafter referred to as 'impugned order') passed by the Asst. Commissioner, CGST Division Junagadh, Bhavnagar Commissionerate (hereinafter referred to as "adjudicating authority").

- 2. The brief facts of the case are that the Appellant was engaged in manufacture of Cement and Cement Clinker and was registered with Central Excise. During audit of the records of the Appellant, it was observed that the Appellant had availed Cenvat credit of service tax paid on (i) repair and maintenance of Silo Machine (ii) installation and maintenance of Air conditioners installed at Ahmedabad and Mumbai officer and (iii) Tour service. It appeared to the Audit that the said services were not used in or in relation to manufacture of final product and consequently not covered under the definition of 'input service' defined under Rule 2(l) of the Cenvat Credit Rules, 2004 (hereinafter referred to as 'CCR,2004').
- 2.1 Show Cause Notice No. VI/8(a)-188/EA-2000/AP-II/2012-13 dated 30.7.2015 was issued to the Appellant calling them to show cause as to why Cenvat credit of Rs. 1,72,382/- should not be disallowed and recovered from them under Rule 14 of CCR,2004 read with Section 11A of the Central Excise Act, 1944 (hereinafter referred to as "Act") along with interest under Rule 14 ibid read with Section 11AA of the Act and proposing imposition of penalty under Rule 15(2) of CCR,2004. The said Show Cause Notice was adjudicated vide Order-in-Original No. AC/JND/2/2016 dated 31.3.2016, which dropped demand of Cenvat credit of Rs. 85,749/- pertaining to repair and maintenance service of Silo Machine but confirmed demand of remaining Cenvat credit of Rs. 86,633/- and ordered for its recovery along with interest under Rule 14 of CCR,2004 and also imposed penalty of Rs. 86,633/- under Rule 15 of CCR,2004.
- 2.2 The Appellant preferred appeal before the Commissioner (Appeals), Rajkot who vide Order-in-Appeal No. BHV-EXCUS-000-APP-270-16-17 dated 27.3.2017 rejected the appeal. Aggrieved, the Appellant preferred appeal before the CESTAT, Ahmedabad, which was decided vide Order No. A/13008/2017 dated 10.10.2017. The Tribunal upheld demand of Cenvat credit of repair and maintenance of Air Conditioners but remanded the matter to the



adjudicating authority to decide the eligibility of Cenvat credit availed on Tour Service.

- 2.3 In de-novo adjudication vide the impugned order, the adjudicating authority held that tour ser rices availed by the Appellant for trip to Malaysia and Goa have no relation, directly or indirectly, in the manufacture of final product and the said service does not fall within the definition of 'input service' under Rule 2(l) of CCR, 2004. The impugned order confirmed demand of Cenvat credit of Rs. 77,221/- availed and utilized during August, 2013 to January, 2015 and ordered for its recovery along with interest under Rule 14 of CCR, 2004 and imposed penalty of Rs. 77,221/- under Rule 15(2) ibid.
- 3. Aggrieved, the Appellant has preferred the present appeal on various grounds, *inter alia*, as below:-
- (i) The adjudicating authority failed to appreciate that the input service (tour to Goa and Malaysia) was in connection with sending the dealers to Malaysia and Goa as a part of sales promotion. He failed to take cognizance that this helps in enhancing the sales volume for the future and in effect a sales promotion expense; that these measures act as an incentive to dealers to strive for promotion of the sales of the company's products; that services relating to sales promotion is specifically mentioned in the inclusive clause of definition of "input service "under Rule 2(l) of CCR,2004. Accordingly, the CENVAT credit on this service is clearly admissible and correctly availed by them.
- (ii) The Adjudicating Authority has failed to appreciate that in a competitive market vigorous sales promotion is undertaken not only to increase the sales of the products but to maintain the level of sales and arrest the sliding down of sales; that arranging tours of dealer and professional discussion among the dealers and the company's representative is well-known method of sales promotion adopted by various companies in the industry; that there were professional discussions during the tour between dealers which is a clear indication that the sales promotion activities were part of the tour.
- (iii) That there was bonafide belief that the amount spent on sales promotion is admissible as eligible input service for availing credit; that there was no intention to evade payment of duty; that they would not have deliberately claim inadmissible credit of such paltry sum with intent to evade duty; that there was no ground to hold that Appellant wilfully misstated lmis-declared the facts with



intent to evade tax for imposing penalty under Rule 15(2) of CCR, 2004. Thus, imposition of penalty is not sustainable.

- 4. The P.H. Notices were served to the Appellant for hearing scheduled on 17.4.2019, 22.5.2019,6.6.2019, 19.7.2019, 13.8.2019 and 25.9.2019 but no one appeared on behalf of the Appellant. It appears that the Appellant does not desire to avail the opportunity of personal hearing. I, therefore, proceed to decide the issue on merit on the basis of available records.
- 5. I have carefully gone through the facts of the case, the impugned order and ground of appeal submitted by the appellant in the memorandum of appeal. The issue to be decided is whether the Cenvat credit of Rs. 77,221/- availed by the Appellant on 'tour services' is correct, legal and proper or not.
- 7. On going through the records, I find that the adjudicating authority disallowed Cenvat credit on 'Tour Service' by holding that documents submitted by the Appellant failed to prove nexus between input service and sales promotion. On the other hand, the Appellant has contested that input service was in connection with sending the dealers to Malaysia and Goa as part of sales promotion to increase their sales; that these measures act as an incentive to dealers to strive for promotion of their sales; that arranging tours for dealer is well-known method of sales promotion; that services relating to sales promotion is specifically mentioned in the inclusive clause of definition of "input service" under Rule 2(l) of CCR,2004 and hence, they had correctly availed Cenvat credit.
- 8. For determining whether the 'Tour Service' availed by the Appellant can be considered as 'sales promotion' as claimed by the Appellant, it is necessary to understand the meaning of the expression 'sales promotion'. I find that the Hon'ble Gujarat High Court in the case of Cadila Healthcare Ltd reported as 2013 (30) S.T.R. 3 (Guj.) examined the term 'sales promotion' as under:
  - "(vii) The expression 'sales promotion' has been defined in the Oxford Dictionary of Business to mean an activity designed to boost the sales of a product or service. It may include an advertising campaign, increased PR activity, a free-sample campaign, offering free gifts or trading stamps, arranging demonstrations or exhibitions, setting up competitions with attractive prizes, temporary price reductions, door-to-door calling, telephone selling, personal letters etc. In the Oxford Dictionary of Business English, sales promotion has been defined as a group of activities that are intended to improve sales, sometimes including advertising, organizing competitions, providing free gifts and samples. These promotions may form part of a wider sales campaign. Sales promotion has also been defined as stimulation of sales achieved through contests, demonstrations, discounts, exhibitions or tradeshows, games, giveaways, point-of-sale displays and merchandising, special offers, and similar



activities. The Advanced Law Lexicon by P. Ramanatha Aiyar, third edition, describes the term sales promotion as use of incentives to get people to buy a product or a sales drive. In the case of Commissioner of Income-tax v. Mohd. Ishaque Gulam, 232 ITR 869, a Division Bench of the Madhya Pradesh High Court drew a distinction between the expenditure made for sales promotion and commission paid to agents. It was held that commission paid to the agents cannot be termed as expenditure on sales promotion.

(viii) From the definition of sales promotion, it is apparent that in case of sales promotion a large population of consumers is targeted. Such activities relate to promotion of sales in general to the consumers at large and are more in the nature of the activities referred to in the preceding paragraph. ...."

(Emphasis supplied)

- 8.1 As per the facts emerging from present case, the Appellant had booked tours to Malaysia and Goa for their dealers as part of incentive, presumably on achieving sales target. In letters of two dealers furnished by the Appellant in the Appeal Memorandum, dealers have described about activities carried out by them during said tours like discussing about trends of the market and ways & means to increase sales of the company, sharing knowledge about competitors' pricing and marketing strategy etc. On comparing the definition of 'sales promotion' reproduced in decision *supra*, I am of the considered opinion that activities carried out during said tours cannot be considered as 'sales promotion'. From the said definition of 'sales promotion', it is apparent that such activities relate to promotion of sales in general to the consumers at large. On the other hand, the dealers who participated in the tours were only involved in selling of goods and not concerned in promotion of sales.
- 9. In view of above, I hold that Cenvat credit availed on tour service cannot be considered as sales promotion and consequently not covered within definition of 'input service' under Rule 2(l) of CCR, 2004. The Appellant is, therefore, not eligible to avail Cenvat credit of Rs. 77,221/-. The confirmation of demand of Rs. 77,221/- under Rule 14 of CCR, 2004 is upheld.
- 10. Regarding imposition of penalty under Rule 15(2) of CCR, 2004, the Appellant has pleaded that there was no malafide intention on their part to evade payment of tax and hence, penalty may be set aside. I find that wrong availment of Cenvat credit on 'Tour Service' by the Appellant was detected during Audit undertaken by the Department. Had there been no Audit of the records of the Appellant, said wrong availment of Cenvat credit by the Appellant would have gone unnoticed. So, there was suppression of facts involved in the present case. Since the Appellant suppressed the facts of







availment of ineligible Cenvat credit on 'Tour Service', penalty under Rule 15(2) of CCR,2004 is mandatory as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.), wherein it is held that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold penalty of Rs. 77,221/- imposed under Rule 15(2) of CCR,2004.

- 11. In view of above, I uphold the impugned order and reject the appeal.
- अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है। 12.
- 12. The appeal filed by the Appellant is disposed off as above.

**Attested** 

(V.T.SHAH)

सत्यापित,

Commissioner(Appeals)

Superintendent(Appeals)

By R.P.A.D.

विपुल शाह मधीक्षक (अपील्स)

To, M/s Saurashtra Cement Ltd, Near Railway Station,	सेवा में,
	में सौराष्ट्र सीमेंट लिमिटेड,
Ranavav - 360560,	रेल्वे स्टेशन के पास,
District Porbandar.	राणावाव - 360560,
	जिल्ला पोरबंदर ।

#### प्रति:-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र,अहमदाबाद को जानकारी हेत्।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेत्।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, जूनागढ़ मण्डल, ज्नागढ़ को आवश्यक कार्यवाही हेत्।
- 4) गार्ड फ़ाइल।



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